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No. 357

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

GENERAL TELEPHONE COMPANY OF CALIFORNIA, ET AL.,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, UNITED STATES OF AMERICA, NATIONAL CABLE TELEVISION ASSOCIATION, INC., ET AL., *Respondents.*

REPLY BRIEF FOR PETITIONERS

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The Government relies heavily upon the statement in the opinion below that a denial of the Commission's jurisdiction over the common carrier facilities at issue here "would tend to fragment the regulation of a communications activity which cannot be regulated on any realistic basis except by a central authority; fifty states and myriad local authorities cannot effectively deal with bits and pieces of what is really a unified system of communication." (Gov. Br. 7).

This argument that common carrier services provided to CATV operators must be federally regulated

because of the need for centralized regulation of CATV itself ignores the fact that Congress deliberately chose to assign to the States a primary role for regulating services provided by communications common carriers.* (Petr. Br. 14-15). It is for this reason that the telephone system— a far more "unified system of communication" than CATV—consists of facilities which are for the most part subject to state and local, not federal regulation. (Petr. Br. 15 n. 10).

The Government's argument for total federal preemption of regulatory authority over all aspects of CATV is also inconsistent with a decision of a three-judge district court that is now before this Court on direct appeal. *TV PIX, Inc.* v. *Taylor,* No. 214, Oct. Term, 1969. In both the proceedings below and in the Jurisdictional Statement in this Court the appellants in *TV Pix* basically argued that the Federal Communications Commission's jurisdiction over the regulation of television and CATV is so broad that it preempts Nevada's regulation of CATV operators' rates and franchises. The lower court in *TV Pix* rejected that contention, holding that the FCC has only limited jurisdiction to regulate some CATV operations (*e.g.,* importing distant television broadcast signals, see *United States* v. *Southwestern Cable Co.,* 392 U.S. 157) and that this jurisdiction does not foreclose state regulation of other aspects of the CATV industry. The holding of *TV Pix* is consistent with one of the major points that the carriers have made in this case (Petr.

* Contrary to the Government's assertion that the common carrier service at issue here is "wholly separate and distinct from other communications services offered by the carriers" (Gov. Br. 4), CATV channel service is, in fact, provided by facilities that are similar to and in some instances identical with facilities used to provide other similar forms of telephone service. (Petr. Br. 4).

Br. 4, 8-11) and was relied upon in their petition and in their brief to the court of appeals. (Petr. Br. 11).

If this Court notes probable jurisdiction in *TV Pix* and sets that case for oral argument, it is respectfully suggested that the Court should grant certiorari in this case so as to have before it a broader range of issues concerning federal preemption of state regulatory authority over matters affecting the CATV industry. Conversely, an affirmance of *TV Pix* would constitute a rejection by this Court of the arguments for centralized regulation of CATV and would be inconsistent with the rationale of the court of appeals in this case that common carrier service to CATV operators must be federally regulated because of that service's relationship to CATV operations.

CONCLUSION

The writ should be granted for the reasons stated in the petition and in this reply brief.

Respectfully submitted,

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